

I_133_0905-12

133rd General Assembly
Regular Session
2019-2020

. B. No.

A BILL

To amend sections 3706.02, 3706.03, 4928.644, 1
4928.66, and 4928.6610, to enact sections 2
3706.40, 3706.42, 3706.44, 3706.45, 3706.46, 3
3706.47, 3706.471, 3706.48, 3706.481, 3706.482, 4
3706.49, 3706.50, 4905.311, 4928.46, 4928.47, 5
4928.471, 4928.647, and 4928.661, and to repeal 6
section 4928.6616 of the Revised Code to create 7
the Ohio Clean Air Program, to facilitate and 8
encourage electricity production and use from 9
clean air resources, to facilitate investment to 10
reduce the emissions from other generating 11
technologies that can be readily dispatched to 12
satisfy demand in real time, and proactively 13
engage the buying power of consumers in this 14
state for the purpose of improving air quality 15
in this state. 16

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3706.02, 3706.03, 4928.644, 17
4928.66, and 4928.6610 be amended and sections 3706.40, 3706.42, 18



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3706.44, 3706.45, 3706.46, 3706.47, 3706.471, 3706.48, 3706.481, 19
3706.482, 3706.49, 3706.50, 4905.311, 4928.46, 4928.47, 20
4928.471, 4928.647, and 4928.661 of the Revised Code be enacted 21
to read as follows: 22

Sec. 3706.02. (A) There is hereby created the Ohio air 23
quality development authority. Such authority is a body both 24
corporate and politic in this state, and the carrying out of its 25
purposes and the exercise by it of the powers conferred by 26
Chapter 3706. of the Revised Code shall be held to be, and are 27
hereby determined to be, essential governmental functions and 28
public purposes of the state, but the authority shall not be 29
immune from liability by reason thereof. 30

(B) The authority shall consist of ~~seven~~ eleven members as 31
follows: ~~five~~ 32

(1) Five members appointed by the governor, with the 33
advice and consent of the senate, no more than three of whom 34
shall be members of the same political party, ~~and the~~ 35

(2) The director of environmental protection ~~and the~~, who 36
shall be a member ex officio without compensation; 37

(3) The director of health, who shall be ~~members~~ a member 38
ex officio without compensation; 39

(4) Four legislative members, who shall be nonvoting 40
members ex officio without compensation. The speaker of the 41
house of representatives, the president of the senate, and the 42
minority leader of each house shall each appoint one of the 43
legislative members. The legislative members may not vote but 44
may otherwise participate fully in all the board's deliberations 45
and activities. ~~Each~~ 46

Each appointive member shall be a resident of the state, 47

and a qualified elector therein. The members of the authority 48
first appointed shall continue in office for terms expiring on 49
June 30, 1971, June 30, 1973, June 30, 1975, June 30, 1977, and 50
June 30, 1978, respectively, the term of each member to be 51
designated by the governor. Appointed members' terms of office 52
shall be for eight years, commencing on the first day of July 53
and ending on the thirtieth day of June. Each appointed member 54
shall hold office from the date of ~~his~~ appointment until the end 55
of the term for which ~~he was~~ appointed. Any member appointed to 56
fill a vacancy occurring prior to the expiration of the term for 57
which ~~his~~ the member's predecessor was appointed shall hold 58
office for the remainder of such term. Any appointed member 59
shall continue in office subsequent to the expiration date of ~~his~~ 60
the member's term until ~~his~~ the member's successor takes 61
office, or until a period of sixty days has elapsed, whichever 62
occurs first. A member of the authority is eligible for 63
reappointment. Each appointed member of the authority, before 64
entering upon ~~his~~ official duties, shall take an oath as 65
provided by Section 7 of Article XV, Ohio Constitution. The 66
governor may at any time remove any member of the authority for 67
misfeasance, nonfeasance, or malfeasance in office. The 68
authority shall elect one of its appointed members as ~~chairman~~ 69
chairperson and another as ~~vice-chairman~~ vice-chairperson, and 70
shall appoint a secretary-treasurer who need not be a member of 71
the authority. Four members of the authority shall constitute a 72
quorum, and the affirmative vote of four members shall be 73
necessary for any action taken by vote of the authority. No 74
vacancy in the membership of the authority shall impair the 75
rights of a quorum by such vote to exercise all the rights and 76
perform all the duties of the authority. 77

~~Before~~ (C) Except as provided in division (D) of this 78

section, before the issuance of any air quality revenue bonds 79
under Chapter 3706. of the Revised Code, each appointed member 80
of the authority shall give a surety bond to the state in the 81
penal sum of twenty-five thousand dollars and the secretary- 82
treasurer shall give such a bond in the penal sum of fifty 83
thousand dollars, each such surety bond to be conditioned upon 84
the faithful performance of the duties of the office, to be 85
executed by a surety company authorized to transact business in 86
this state, and to be approved by the governor and filed in the 87
office of the secretary of state. ~~Each~~ Except as provided in 88
division (B) (4) of this section, each appointed member of the 89
authority shall receive an annual salary of five thousand 90
dollars, payable in monthly installments. Each member shall be 91
reimbursed for ~~his~~ the actual expenses necessarily incurred in 92
the performance of ~~his~~ official duties. All expenses incurred in 93
carrying out Chapter 3706. of the Revised Code shall be payable 94
solely from funds provided under Chapter 3706. of the Revised 95
Code, appropriated for such purpose by the general assembly, or 96
provided by the controlling board. No liability or obligation 97
shall be incurred by the authority beyond the extent to which 98
moneys have been so provided or appropriated. 99

(D) The four legislative members appointed under division 100
(B) (4) of this section shall be exempt from the requirement 101
under division (C) of this section to give a surety bond. 102

Sec. 3706.03. (A) It is hereby declared to be the public 103
policy of the state through the operations of the Ohio air 104
quality development authority under this chapter to contribute 105
toward one or more of the following: ~~to~~ 106

(1) To provide for the conservation of air as a natural 107
resource of the state, ~~and to~~ ; 108

<u>(2) To prevent or abate the pollution thereof,</u> to;	109
<u>(3) To provide for the comfort, health, safety, and</u>	110
general welfare of all employees, as well as all other	111
inhabitants of the state,to;	112
<u>(4) To assist in the financing of air quality facilities</u>	113
for industry, commerce, distribution, and research, including	114
public utility companies,to;	115
<u>(5) To create or preserve jobs and employment</u>	116
opportunities or improve the economic welfare of the people, or	117
assist and cooperate with governmental agencies in achieving	118
such purposes;	119
<u>(6) To maintain operations of certified clean air</u>	120
<u>resources, as defined in section 3706.40 of the Revised Code,</u>	121
<u>that, through continued operation, are expected to provide the</u>	122
<u>greatest quantity of carbon-dioxide-free electric energy</u>	123
<u>generation, and to encourage the operation and development of</u>	124
<u>other clean air resources that provide carbon-dioxide-free</u>	125
<u>electric energy generation;</u>	126
<u>(7) To encourage reduced emissions resources, as defined</u>	127
<u>in section 3706.40 of the Revised Code, to reduce the resources'</u>	128
<u>emissions.</u>	129
<u>(B) In furtherance of such public policy the Ohio air</u>	130
quality development authority may initiate <u>do any of the</u>	131
<u>following:</u>	132
<u>(1) Initiate,</u> acquire, construct, maintain, repair, and	133
operate air quality projects or cause the same to be operated	134
pursuant to a lease, sublease, or agreement with any person or	135
governmental agency; may make	136

(2) Make loans and grants to governmental agencies for the 137
acquisition or construction of air quality facilities by such 138
governmental agencies;~~may make~~ 139

(3) Make loans to persons for the acquisition or 140
construction of air quality facilities by such persons;~~may~~ 141
~~enter~~ 142

(4) Enter into commodity contracts with, or make loans for 143
the purpose of entering into commodity contracts to, any person, 144
governmental agency, or entity located within or without the 145
state in connection with the acquisition or construction of air 146
quality facilities;~~and may issue~~ 147

(5) Issue air quality revenue bonds of this state payable 148
solely from revenues, to pay the cost of such projects, 149
including any related commodity contracts. 150

(C) Any air quality project shall be determined by the 151
authority to be not inconsistent with any applicable air quality 152
standards duly established and then required to be met pursuant 153
to the "Clean Air Act," 84 Stat. 1679 (1970), 42 U.S.C.A. 1857, 154
as amended. Any resolution of the authority providing for 155
acquiring or constructing such projects or for making a loan or 156
grant for such projects shall include a finding by the authority 157
that such determination has been made. Determinations by 158
resolution of the authority that a project is an air quality 159
facility under this chapter and is consistent with the purposes 160
of section 13 of Article VIII, Ohio Constitution, and this 161
chapter, shall be conclusive as to the validity and 162
enforceability of the air quality revenue bonds issued to 163
finance such project and of the resolutions, trust agreements or 164
indentures, leases, subleases, sale agreements, loan agreements, 165
and other agreements made in connection therewith, all in 166

accordance with their terms. 167

Sec. 3706.40. As used in sections 3706.40 to 3706.50 of 168
the Revised Code: 169

(A) "Clean air resource" means an electric generating 170
facility that produces electricity from the utilization or 171
consumption of any form of primary energy that emits zero carbon 172
dioxide and that satisfies all of the following criteria: 173

(1) The facility is not wholly or partially owned by a 174
municipal or cooperative corporation or a group, association, or 175
consortium of those corporations. 176

(2) The facility is not used to supply customers of a 177
wholly owned municipal or cooperative corporation or a group, 178
association, or consortium of those corporations. 179

(3) Either of the following: 180

(a) The facility has made a significant historical 181
contribution to the air quality of the state by minimizing 182
emissions that result from electricity generated in this state. 183

(b) The facility will make a significant contribution 184
toward minimizing emissions that result from electric generation 185
in this state. 186

(4) If the facility is designed for, or capable of, 187
operation at an aggregate capacity of twenty or more megawatts, 188
the facility is interconnected with PJM interconnection, L.L.C., 189
or its successor organization. 190

(5) Regardless of the location of the meter, the facility 191
is any of the following: 192

(a) A major utility facility in this state as defined in 193

<u>section 4906.01 of the Revised Code;</u>	194
<u>(b) An economically significant wind farm in this state as defined in section 4906.13 of the Revised Code;</u>	195
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<u>(c) A small wind farm in this state as defined in section 303.213 of the Revised Code.</u>	197
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<u>(B) "Reduced emissions resource" means an electric generating facility that emits a reduced amount of carbon dioxide in the production of electricity from the utilization or consumption of any form of primary energy that satisfies all of the following criteria:</u>	199
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<u>(1) The facility is not wholly or partially owned by a municipal or cooperative corporation or a group, association, or consortium of those corporations.</u>	204
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<u>(2) The facility is not used to supply customers of a wholly owned municipal or cooperative corporation or a group, association, or consortium of those corporations.</u>	207
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<u>(3) The facility will make a significant contribution toward minimizing emissions that result from electric generation in this state.</u>	210
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<u>(4) The facility is interconnected with PJM interconnection, L.L.C., or its successor organization.</u>	213
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<u>(5) The facility is a major utility facility in this state as defined in section 4906.01 of the Revised Code.</u>	215
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<u>(C) "Program year" means the twelve-month period beginning the first day of June of a given year of the Ohio clean air program and ending the thirty-first day of May of the following year.</u>	217
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(D) "Electric distribution utility" and "renewable energy resource" have the same meanings as in section 4928.01 of the Revised Code. 221
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(E) "Annual capacity factor" means the actual energy produced in a year divided by the energy that would have been produced if the facility was operating continuously at the maximum rating. 224
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(F) "Clean air credit" means a credit that represents the clean air attributes of one megawatt hour of electric energy produced from a certified clean air resource. 228
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Sec. 3706.42. (A) (1) There is hereby created the Ohio clean air program. 231
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(2) (a) In 2029, the Ohio air quality development authority shall conduct an inquiry to determine whether it is in the public interest to continue the Ohio clean air program after 2030. 233
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(b) After the inquiry is complete, the authority shall submit a report of its findings to the general assembly. 237
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(B) Any person owning or controlling an electric generating facility that meets the definition of a clean air resource or reduced emissions resource in section 3706.40 of the Revised Code may submit a written application with the Ohio air quality development authority for certification as a clean air resource or reduced emissions resource to be eligible to participate in the Ohio clean air program. Applications shall be submitted by the first day of February for any program year beginning the first day of June of the same calendar year. 239
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(C) Applications shall include all of the following information: 248
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<u>(1) The in-service date and estimated remaining useful</u>	250
<u>life of the resource;</u>	251
<u>(2) For an existing resource, the quantity of megawatt</u>	252
<u>hours generated by the resource annually during each of the</u>	253
<u>previous five calendar years during which the resource was</u>	254
<u>generating, and the annual capacity factor for each of those</u>	255
<u>calendar years;</u>	256
<u>(3) A forecast estimate of the annual quantity of megawatt</u>	257
<u>hours to be generated by the resource and the projected annual</u>	258
<u>capacity factor over the remaining useful life of the resource;</u>	259
<u>(4) For a clean air resource, a forecast estimate of the</u>	260
<u>emissions that would occur in this state during the remaining</u>	261
<u>useful life of the resource if the resource discontinued</u>	262
<u>operations prior to the end of the resource's useful life;</u>	263
<u>(5) Verified documentation demonstrating all of the</u>	264
<u>following:</u>	265
<u>(a) That certification as a clean air resource or reduced</u>	266
<u>emissions resource and participation in the Ohio clean air</u>	267
<u>program will permit the resource to reduce future emissions per</u>	268
<u>unit of electrical energy generated in this state;</u>	269
<u>(b) That without certification as a clean air resource or</u>	270
<u>reduced emissions resource, the positive contributions to the</u>	271
<u>air quality of this state that the resource has made and is</u>	272
<u>capable of making in the future may be diminished or eliminated;</u>	273
<u>(c) That the clean air resource or reduced emissions</u>	274
<u>resource meets the definition of a clean air resource or reduced</u>	275
<u>emissions resource, as applicable, in section 3706.40 of the</u>	276
<u>Revised Code;</u>	277

<u>(d) That the person seeking certification owns or controls</u>	278
<u>the resource.</u>	279
<u>(6) The resource's nameplate capacity;</u>	280
<u>(7) For a reduced emissions resource, the level of funding</u>	281
<u>requested from the Ohio clean air program;</u>	282
<u>(8) Any other data or information that the authority</u>	283
<u>requests and determines is necessary to evaluate an application</u>	284
<u>for certification as a clean air resource or reduced emissions</u>	285
<u>resource or to demonstrate that certification would be in the</u>	286
<u>public interest.</u>	287
<u>(D) The authority shall post on the authority's web site</u>	288
<u>all applications and nonconfidential supporting materials</u>	289
<u>submitted under this section.</u>	290
<u>(E) Interested persons may file comments not later than</u>	291
<u>twenty days after the date that an application is posted on the</u>	292
<u>authority's web site. All comments shall be posted on the</u>	293
<u>authority's web site. An applicant may respond to those comments</u>	294
<u>not later than ten days thereafter.</u>	295
<u>Sec. 3706.44.</u> <u>(A) (1) On or before the thirty-first day of</u>	296
<u>March, the Ohio air quality development authority shall review</u>	297
<u>all applications timely submitted under section 3706.42 of the</u>	298
<u>Revised Code and issue an order certifying a clean air resource</u>	299
<u>or reduced emissions resource that meets the definition of a</u>	300
<u>clean air resource or reduced emissions resource, as applicable,</u>	301
<u>in section 3706.40 of the Revised Code.</u>	302
<u>(2) (a) A clean air resource shall remain certified as a</u>	303
<u>clean air resource as long as the resource continues to meet the</u>	304
<u>definition of a clean air resource in section 3706.40 of the</u>	305
<u>Revised Code.</u>	306

(b) A reduced emissions resource may be certified for one 307
or more program years. A reduced emissions resource shall be 308
eligible to remain certified as a reduced emissions resource, 309
provided that the resource continues to meet the definition of a 310
reduced emissions resource in section 3706.40 of the Revised 311
Code and any additional requirements set by the authority. 312

(B) In the event the authority does not issue an order 313
under division (A) of this section by the thirty-first day of 314
March, each electric generating facility included in a timely 315
and properly filed application shall be deemed a clean air 316
resource or reduced emissions resource, as applicable, that is 317
eligible for participation in the Ohio clean air program. 318

(C) (1) The authority may decertify a clean air resource or 319
reduced emissions resource at any time if it determines that 320
certification is not in the public interest. 321

(2) Before decertifying a clean air resource or reduced 322
emissions resource, the authority shall hold a public hearing 323
and allow for public comment. 324

Sec. 3706.45. (A) During the last year in which 325
certification as a reduced emissions resource is effective under 326
section 3706.44 of the Revised Code, the Ohio air quality 327
development authority shall reevaluate the eligibility of the 328
reduced emissions resource for participation in the Ohio clean 329
air program. At the time of reevaluation, if the reduced 330
emissions resource still meets the definition of a reduced 331
emissions resource in section 3706.40 of the Revised Code and 332
any additional requirements that were imposed by the authority 333
when the resource was last certified, the authority shall 334
recertify the resource for one or more program years. 335

(B) (1) If the authority recertifies the reduced emissions resource under division (A) of this section, the authority may impose requirements on the reduced emissions resource that are in addition to any requirements that were imposed when the resource was last certified. If additional requirements are imposed at the time of recertification, the resource shall comply with both the old requirements and the new requirements. 336
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(2) The authority shall adopt rules in accordance with Chapter 119. of the Revised Code to determine the amount of time during which a reduced emissions resource must come into compliance with the new requirements. 343
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Sec. 3706.46. (A) For the purpose of funding benefits provided by the Ohio clean air program, there is hereby created the Ohio clean air program fund. The fund shall be in the custody of the state treasurer but shall not be part of the state treasury. The fund shall consist of the charges under section 3706.47 of the Revised Code. All interest generated by the fund shall be retained in the fund and used for the purpose of funding the Ohio clean air program. 347
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(B) The treasurer shall distribute the moneys in the Ohio clean air program fund in accordance with the directions provided by the Ohio air quality development authority. 355
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Sec. 3706.47. (A) Beginning January 1, 2020, each retail electric customer of an electric distribution utility in this state shall pay a per-account monthly charge, which shall be billed and collected by each electric distribution utility and remitted to the state treasurer for deposit into the Ohio clean air program fund, created under section 3706.46 of the Revised Code. 358
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(B) The monthly charges established under division (A) of 365
this section shall be: 366

(1) For customers classified by the utility as 367
residential: 368

(a) For the year 2020, fifty cents; 369

(b) For the year 2021 and each year thereafter, two 370
dollars and fifty cents. 371

(2) For customers classified by the utility as commercial, 372
except as provided in division (B)(4) of this section: 373

(a) For the year 2020, fifteen dollars; 374

(b) For the year 2021 and each year thereafter, twenty 375
dollars. 376

(3) For customers classified by the utility as industrial, 377
two hundred fifty dollars, except as provided in division (B)(4) 378
of this section; 379

(4) For customers classified by the utility as commercial 380
or industrial that exceeded forty-five million kilowatt hours of 381
electricity at a single location in the preceding year, two 382
thousand five hundred dollars. 383

(C) For purposes of division (B) of this section, the 384
classification of residential, commercial, and industrial 385
customers shall be consistent with the utility's reporting under 386
its approved rate schedules. 387

(D) A customer required to pay the monthly charge under 388
divisions (A) and (B) of this section shall be exempt from 389
paying costs associated with the requirements under section 390
4928.64 of the Revised Code, unless the customer opts, in 391

accordance with section 3706.471 of the Revised Code, to pay 392
those costs in addition to the charge imposed under this 393
section. 394

(E) An electric distribution utility may submit an 395
application to the Ohio air quality development authority for 396
reimbursement, from the Ohio clean air program fund, of the 397
following costs to comply with the requirements under section 398
4928.64 of the Revised Code: 399

(1) Costs prudently incurred for contractual obligations 400
that existed prior to the effective date of this section by an 401
electric distribution utility in reliance on the requirements 402
under section 4928.64 of the Revised Code; 403

(2) Costs prudently incurred by an electric distribution 404
utility associated with programs approved by the public 405
utilities commission under section 4928.64 of the Revised Code 406
that are modified or eliminated as a result of H.B. 6 of the 407
133rd general assembly, including any costs to discontinue those 408
programs. 409

(F) Upon receipt of an application made under division (E) 410
of this section and upon verification of the prudently incurred 411
costs in the application, the authority shall direct the 412
treasurer of state to remit money from the Ohio clean air 413
program fund to the electric distribution utility as 414
reimbursement for those costs. 415

Sec. 3706.471. Any customer opting to pay costs associated 416
with the requirements under section 4928.64 of the Revised Code 417
shall do so by providing a written notice of intent to opt in to 418
pay those costs to the electric distribution utility from which 419
it receives service. The customer shall submit a complete copy 420

of the opt-in notice to the secretary of the public utilities 421
commission. The notice shall include all of the following: 422

(A) A statement indicating that the customer has elected 423
to opt in; 424

(B) The effective date of the election to opt in; 425

(C) The account number for each customer account to which 426
the opt in shall apply; 427

(D) The physical location of the customer's load center. 428

Sec. 3706.48. Each owner of a certified clean air resource 429
or certified reduced emissions resource shall report to the Ohio 430
air quality development authority, not later than seven days 431
after the close of each month during a program year, the number 432
of megawatt hours the resource produced in the previous month. 433

Sec. 3706.481. A certified clean air resource shall earn a 434
clean air credit for each megawatt hour of electricity it 435
produces. 436

Sec. 3706.482. (A) (1) Not later than fourteen days after 437
the close of each month during a program year, the Ohio air 438
quality development authority shall direct the treasurer of 439
state to remit money from the Ohio clean air program fund, as 440
long as there is sufficient money in the fund, to each owner of 441
a certified clean air resource in the amount equivalent to the 442
number of credits earned by the resource during the previous 443
month multiplied by the credit price. 444

(2) If the money in the Ohio clean air program fund is 445
insufficient to pay for all the credits earned by a resource, 446
the unpaid credits shall be paid first in the next monthly 447
payment period. 448

(B) (1) The price for each clean air credit in the first 449
program year shall be nine dollars. 450

(2) In subsequent program years, the price may be adjusted 451
for inflation using the gross domestic product implicit price 452
deflator as published by the United States department of 453
commerce, bureau of economic analysis. 454

Sec. 3706.49. (A) To facilitate air quality development 455
related capital formation and investment by or in a certified 456
clean air resource or certified reduced emissions resource, the 457
Ohio air quality development authority may pledge a portion of 458
moneys that may, in the future, be accumulated in the Ohio clean 459
air program fund for the benefit of any certified clean air 460
resource or certified reduced emissions resource, provided the 461
resource agrees to be bound by the conditions the authority may 462
attach to the pledge. 463

(B) The authority shall not be required to direct 464
distribution of moneys in the Ohio clean air program fund unless 465
or until there are adequate moneys available in the Ohio clean 466
air program fund. Nothing herein shall cause any such pledge to 467
be construed or applied to create, directly or indirectly, a 468
general obligation of or for this state. 469

Sec. 3706.50. (A) The Ohio air quality development 470
authority shall conduct an annual audit of the Ohio clean air 471
program. 472

(B) Not later than ninety days after the effective date of 473
this section, the authority shall adopt rules under Chapter 119. 474
of the Revised Code that are necessary to begin implementation 475
of the Ohio clean air program. The rules adopted under this 476
division shall include provisions for both of the following: 477

(1) Tracking the number of clean air credits earned by 478
each certified clean air resource during each month of a program 479
year, based on the information reported under section 3706.48 of 480
the Revised Code; 481

(2) The annual audit required under division (A) of this 482
section. 483

(C) Not later than two hundred seventy-five days after the 484
effective date of this section, the authority shall adopt rules 485
under Chapter 119. of the Revised Code that are necessary for 486
the further implementation and administration of the Ohio clean 487
air program. 488

Sec. 4905.311. In order to promote job growth and 489
retention in this state, the public utilities commission, when 490
ruling on a reasonable arrangement application under section 491
4905.31 of the Revised Code, shall attempt to minimize electric 492
rates to the maximum amount possible on trade-exposed industrial 493
manufacturers. 494

Sec. 4928.46. (A) In the event that the federal energy 495
regulatory commission authorizes a program by which this state 496
may take action to satisfy any portion of the capacity resource 497
obligation associated with the organized wholesale market that 498
functions to meet the capacity, energy services, and ancillary 499
services needs of consumers in this state, the public utilities 500
commission shall promptly review the program and submit a report 501
of its findings to the general assembly. 502

(B) The report shall include any recommendations for 503
legislation that may be necessary to permit this state to 504
beneficially participate in any such program. 505

(C) The report shall incorporate the policy of 506

facilitating the state's effectiveness in the global economy by 507
minimizing any adverse impact on trade-exposed industrial 508
manufacturers. 509

Sec. 4928.47. (A) As used in this section, "clean air 510
resource" means any of the following: 511

(1) A clean air resource as defined in section 3706.40 of 512
the Revised Code; 513

(2) A customer-sited renewable energy resource; 514

(3) A renewable energy resource that is a self-generator. 515

(B) (1) Through its general supervision, ratemaking, cost 516
assignment, allocation, rate schedule approval, and rulemaking 517
authority, as well as its authority under section 4905.31 of the 518
Revised Code, the public utilities commission shall facilitate 519
and encourage the establishment of retail purchased power 520
agreements having a term of three years or more through which 521
consumers commit to satisfy a material portion of their 522
electricity requirements from the output of a clean air 523
resource. 524

(2) The commission's application and administration of 525
this section shall be the same for all clean air resources 526
regardless of whether the resource is certified or eligible for 527
certification under the Ohio clean air program created under 528
section 3706.42 of the Revised Code. 529

(3) In addition to any other benefits that may be 530
available as a result of the commission's application of its 531
authority under this section, on the effective date of a retail 532
purchased power agreement, the commission may exempt such 533
purchasing consumer from all of the following, provided the 534
customer agrees to forgo the benefits from compliance with the 535

<u>programs established in sections 3706.42, 4928.64, and 4928.66</u>	536
<u>of the Revised Code;</u>	537
<u>(a) The Ohio clean air program charge established in</u>	538
<u>section 3706.47 of the Revised Code;</u>	539
<u>(b) The renewable energy charge for compliance with</u>	540
<u>section 4928.64 of the Revised Code;</u>	541
<u>(c) The energy efficiency and peak demand reduction charge</u>	542
<u>for compliance with section 4928.66 of the Revised Code.</u>	543
<u>(C) (1) Not later than ninety days after the effective date</u>	544
<u>of this section, the commission shall promulgate rules under</u>	545
<u>Chapter 119. of the Revised Code as necessary to begin the</u>	546
<u>implementation of this section.</u>	547
<u>(2) Not later than two hundred seventy-five days after the</u>	548
<u>effective date of this section, the commission shall promulgate</u>	549
<u>rules for further implementation and administration of this</u>	550
<u>section.</u>	551
Sec. 4928.471. <u>(A) Except as provided in division (D) of</u>	552
<u>this section, not earlier than thirty days after the effective</u>	553
<u>date of this section, an electric distribution utility may file</u>	554
<u>an application to implement a decoupling mechanism for the 2019</u>	555
<u>calendar year and each calendar year thereafter. For an electric</u>	556
<u>distribution utility that applies for a decoupling mechanism</u>	557
<u>under this section, the base distribution rates for residential</u>	558
<u>and commercial customers shall be decoupled to the base</u>	559
<u>distribution revenue and revenue resulting from implementation</u>	560
<u>of section 4928.66 of the Revised Code and recovered pursuant to</u>	561
<u>an approved electric security plan under section 4928.143 of the</u>	562
<u>Revised Code, as of the twelve-month period ending on December</u>	563
<u>31, 2018. An application under this division shall not be</u>	564

considered an application under section 4909.18 of the Revised 565
Code. 566

(B) The commission shall issue an order approving an 567
application for a decoupling mechanism filed under division (A) 568
of this section not later than sixty days after the application 569
is filed. Before approving the application, the commission shall 570
verify that the rate schedule or schedules are designed to 571
recover the electric distribution utility's 2018 annual revenues 572
as described in division (A) of this section and that the 573
decoupling rate design is aligned with the rate design of the 574
electric distribution utility's existing base distribution 575
rates. The decoupling mechanism shall recover an amount equal to 576
the base distribution revenue and revenue resulting from 577
implementation of section 4928.66 of the Revised Code and 578
recovered pursuant to an approved electric security plan under 579
section 4928.143 of the Revised Code, as of the twelve-month 580
period ending on December 31, 2018. The decoupling mechanism 581
shall be adjusted annually thereafter to reconcile any over 582
recovery or under recovery from the prior year and to enable an 583
electric distribution utility to recover the same level of 584
revenues described in division (A) of this section in each year. 585

(C) The commission's approval of a decoupling mechanism 586
under this section shall not affect any other rates, riders, 587
charges, schedules, classifications, or services previously 588
approved by the commission. The decoupling mechanism shall 589
remain in effect until the next time that the electric 590
distribution utility applies for and the commission approves 591
base distribution rates for the utility under section 4909.18 of 592
the Revised Code. 593

(D) Divisions (A), (B), and (C) of this section shall not 594

apply to an electric distribution utility that has base 595
distribution rates that became effective between December 31, 596
2018, and the effective date of this section pursuant to an 597
application for an increase in base distribution rates filed 598
under section 4909.18 of the Revised Code. 599

Sec. 4928.644. (A) The public utilities commission may 600
reduce either baseline described in section 4928.643 of the 601
Revised Code to adjust for new economic growth in the electric 602
distribution utility's certified territory or in the electric 603
services company's service area in this state. 604

(B) For an electric distribution utility and an electric 605
services company, neither baseline shall include the load and 606
usage of a customer who is subject to the monthly charge 607
established under section 3706.47 of the Revised Code unless or 608
until the customer opts to pay the charge associated with 609
compliance with section 4928.64 of the Revised Code. 610

Sec. 4928.647. Subject to approval by the public utilities 611
commission and regardless of any limitations set forth in any 612
other section of Chapter 4928. of the Revised Code, an electric 613
distribution utility may offer a customer the opportunity to 614
purchase renewable energy services on a nondiscriminatory basis, 615
by doing either of the following: 616

(A) (1) An electric distribution utility may seek approval 617
from the commission to establish a schedule or schedules 618
applicable to residential, commercial, industrial, or other 619
customers and provide a customer the opportunity to purchase 620
renewable energy credits for any purpose the customer elects. 621

(2) The commission shall not approve any schedule unless 622
it determines both of the following: 623

(a) The proposed schedule or schedules do not create an 624
undue burden or unreasonable preference or disadvantage to 625
nonparticipating customers. 626

(b) The electric distribution utility seeking approval 627
commits to comply with any conditions the commission may impose 628
to ensure that the electric distribution utility and any 629
participating customers are solely responsible for the risks, 630
costs, and benefits of any schedule or schedules. 631

(B) (1) Consistent with section 4905.31 of the Revised 632
Code, an electric distribution utility, a customer, or a group 633
of customers may seek approval of a nondiscriminatory schedule 634
or reasonable arrangement involving the production and supply of 635
renewable energy, including long-term renewable energy purchase 636
agreements through which an electric distribution utility may 637
construct, lease, finance, or operate renewable energy resources 638
dedicated to that customer or customers. 639

(2) The commission shall not approve any schedule or 640
arrangement unless it determines both of the following: 641

(a) The proposed schedule or arrangement does not create 642
an undue burden or unreasonable preference or disadvantage to 643
nonparticipating customers. 644

(b) The electric distribution utility seeking approval 645
commits to comply with any conditions the commission may impose 646
to ensure that the electric distribution utility and any 647
participating customers are solely responsible for the risks, 648
costs, and benefits of any schedule or reasonable arrangement. 649

Sec. 4928.66. (A) (1) (a) Beginning in 2009, an electric 650
distribution utility shall implement energy efficiency programs 651
that achieve energy savings equivalent to at least three-tenths 652

of one per cent of the total, annual average, and normalized 653
kilowatt-hour sales of the electric distribution utility during 654
the preceding three calendar years to customers in this state. 655
An energy efficiency program may include a combined heat and 656
power system placed into service or retrofitted on or after the 657
effective date of the amendment of this section by S.B. 315 of 658
the 129th general assembly, September 10, 2012, or a waste 659
energy recovery system placed into service or retrofitted on or 660
after September 10, 2012, except that a waste energy recovery 661
system described in division (A) (38) (b) of section 4928.01 of 662
the Revised Code may be included only if it was placed into 663
service between January 1, 2002, and December 31, 2004. For a 664
waste energy recovery or combined heat and power system, the 665
savings shall be as estimated by the public utilities 666
commission. The savings requirement, using such a three-year 667
average, shall increase to an additional five-tenths of one per 668
cent in 2010, seven-tenths of one per cent in 2011, eight-tenths 669
of one per cent in 2012, nine-tenths of one per cent in 2013, 670
and one per cent in 2014. In 2015 and 2016, an electric 671
distribution utility shall achieve energy savings equal to the 672
result of subtracting the cumulative energy savings achieved 673
since 2009 from the product of multiplying the baseline for 674
energy savings, described in division (A) (2) (a) of this section, 675
by four and two-tenths of one per cent. If the result is zero or 676
less for the year for which the calculation is being made, the 677
utility shall not be required to achieve additional energy 678
savings for that year, but may achieve additional energy savings 679
for that year. ~~Thereafter, the~~ The annual savings requirements 680
shall be, for years 2017, 2018, 2019, and 2020, an additional 681
one per cent of the baseline, ~~and two per cent each year~~ 682
~~thereafter, achieving cumulative energy savings in excess of~~ 683
~~twenty two per cent by the end of 2027.~~ For purposes of a waste 684

energy recovery or combined heat and power system, an electric 685
distribution utility shall not apply more than the total annual 686
percentage of the electric distribution utility's industrial- 687
customer load, relative to the electric distribution utility's 688
total load, to the annual energy savings requirement. 689

(b) Beginning in 2009, an electric distribution utility 690
shall implement peak demand reduction programs designed to 691
achieve a one per cent reduction in peak demand in 2009 and an 692
additional seventy-five hundredths of one per cent reduction 693
each year through 2014. In 2015 and 2016, an electric 694
distribution utility shall achieve a reduction in peak demand 695
equal to the result of subtracting the cumulative peak demand 696
reductions achieved since 2009 from the product of multiplying 697
the baseline for peak demand reduction, described in division 698
(A) (2) (a) of this section, by four and seventy-five hundredths 699
of one per cent. If the result is zero or less for the year for 700
which the calculation is being made, the utility shall not be 701
required to achieve an additional reduction in peak demand for 702
that year, but may achieve an additional reduction in peak 703
demand for that year. In 2017 and each year thereafter through 704
2020, the utility shall achieve an additional seventy-five 705
hundredths of one per cent reduction in peak demand. 706

(2) For the purposes of divisions (A) (1) (a) and (b) of 707
this section: 708

(a) The baseline for energy savings under division (A) (1) 709
(a) of this section shall be the average of the total kilowatt 710
hours the electric distribution utility sold in the preceding 711
three calendar years. The baseline for a peak demand reduction 712
under division (A) (1) (b) of this section shall be the average 713
peak demand on the utility in the preceding three calendar 714

years, except that the commission may reduce either baseline to 715
adjust for new economic growth in the utility's certified 716
territory. Neither baseline shall include the load and usage of 717
any of the following customers: 718

(i) Beginning January 1, 2017, a customer for which a 719
reasonable arrangement has been approved under section 4905.31 720
of the Revised Code; 721

(ii) A customer that has opted out of the utility's 722
portfolio plan under section 4928.6611 of the Revised Code; 723

(iii) A customer that has opted out of the utility's 724
portfolio plan under Section 8 of S.B. 310 of the 130th general 725
assembly. 726

(b) The commission may amend the benchmarks set forth in 727
division (A)(1)(a) or (b) of this section if, after application 728
by the electric distribution utility, the commission determines 729
that the amendment is necessary because the utility cannot 730
reasonably achieve the benchmarks due to regulatory, economic, 731
or technological reasons beyond its reasonable control. 732

(c) Compliance with divisions (A)(1)(a) and (b) of this 733
section shall be measured by including the effects of all 734
demand-response programs for mercantile customers of the subject 735
electric distribution utility, all waste energy recovery systems 736
and all combined heat and power systems, and all such mercantile 737
customer-sited energy efficiency, including waste energy 738
recovery and combined heat and power, and peak demand reduction 739
programs, adjusted upward by the appropriate loss factors. Any 740
mechanism designed to recover the cost of energy efficiency, 741
including waste energy recovery and combined heat and power, and 742
peak demand reduction programs under divisions (A)(1)(a) and (b) 743

of this section may exempt mercantile customers that commit 744
their demand-response or other customer-sited capabilities, 745
whether existing or new, for integration into the electric 746
distribution utility's demand-response, energy efficiency, 747
including waste energy recovery and combined heat and power, or 748
peak demand reduction programs, if the commission determines 749
that that exemption reasonably encourages such customers to 750
commit those capabilities to those programs. If a mercantile 751
customer makes such existing or new demand-response, energy 752
efficiency, including waste energy recovery and combined heat 753
and power, or peak demand reduction capability available to an 754
electric distribution utility pursuant to division (A) (2) (c) of 755
this section, the electric utility's baseline under division (A) 756
(2) (a) of this section shall be adjusted to exclude the effects 757
of all such demand-response, energy efficiency, including waste 758
energy recovery and combined heat and power, or peak demand 759
reduction programs that may have existed during the period used 760
to establish the baseline. The baseline also shall be normalized 761
for changes in numbers of customers, sales, weather, peak 762
demand, and other appropriate factors so that the compliance 763
measurement is not unduly influenced by factors outside the 764
control of the electric distribution utility. 765

(d) (i) Programs implemented by a utility may include the 766
following: 767

(I) Demand-response programs; 768

(II) Smart grid investment programs, provided that such 769
programs are demonstrated to be cost-beneficial; 770

(III) Customer-sited programs, including waste energy 771
recovery and combined heat and power systems; 772

(IV) Transmission and distribution infrastructure	773
improvements that reduce line losses;	774
(V) Energy efficiency savings and peak demand reduction	775
that are achieved, in whole or in part, as a result of funding	776
provided from the universal service fund established by section	777
4928.51 of the Revised Code to benefit low-income customers	778
through programs that include, but are not limited to, energy	779
audits, the installation of energy efficiency insulation,	780
appliances, and windows, and other weatherization measures.	781
(ii) No energy efficiency or peak demand reduction	782
achieved under divisions (A) (2) (d) (i) (IV) and (V) of this	783
section shall qualify for shared savings.	784
(iii) Division (A) (2) (c) of this section shall be applied	785
to include facilitating efforts by a mercantile customer or	786
group of those customers to offer customer-sited demand-	787
response, energy efficiency, including waste energy recovery and	788
combined heat and power, or peak demand reduction capabilities	789
to the electric distribution utility as part of a reasonable	790
arrangement submitted to the commission pursuant to section	791
4905.31 of the Revised Code.	792
(e) No programs or improvements described in division (A)	793
(2) (d) of this section shall conflict with any statewide	794
building code adopted by the board of building standards.	795
(B) In accordance with rules it shall adopt, the public	796
utilities commission shall produce and docket at the commission	797
an annual report containing the results of its verification of	798
the annual levels of energy efficiency and of peak demand	799
reductions achieved by each electric distribution utility	800
pursuant to division (A) of this section. A copy of the report	801

shall be provided to the consumers' counsel. 802

(C) If the commission determines, after notice and 803
opportunity for hearing and based upon its report under division 804
(B) of this section, that an electric distribution utility has 805
failed to comply with an energy efficiency or peak demand 806
reduction requirement of division (A) of this section, the 807
commission shall assess a forfeiture on the utility as provided 808
under sections 4905.55 to 4905.60 and 4905.64 of the Revised 809
Code, either in the amount, per day per undercompliance or 810
noncompliance, relative to the period of the report, equal to 811
that prescribed for noncompliances under section 4905.54 of the 812
Revised Code, or in an amount equal to the then existing market 813
value of one renewable energy credit per megawatt hour of 814
undercompliance or noncompliance. Revenue from any forfeiture 815
assessed under this division shall be deposited to the credit of 816
the advanced energy fund created under section 4928.61 of the 817
Revised Code. 818

(D) The commission may establish rules regarding the 819
content of an application by an electric distribution utility 820
for commission approval of a revenue decoupling mechanism under 821
this division. Such an application shall not be considered an 822
application to increase rates and may be included as part of a 823
proposal to establish, continue, or expand energy efficiency or 824
conservation programs. The commission by order may approve an 825
application under this division if it determines both that the 826
revenue decoupling mechanism provides for the recovery of 827
revenue that otherwise may be forgone by the utility as a result 828
of or in connection with the implementation by the electric 829
distribution utility of any energy efficiency or energy 830
conservation programs and reasonably aligns the interests of the 831
utility and of its customers in favor of those programs. 832

(E) The commission additionally shall adopt rules that 833
require an electric distribution utility to provide a customer 834
upon request with two years' consumption data in an accessible 835
form. 836

(F) (1) All the terms and conditions of an electric 837
distribution utility's portfolio plan in effect as of the 838
effective date of the amendments to this section by H.B. 6 of 839
the 133rd general assembly shall remain in place through 840
December 31, 2020, and terminate on that date. 841

(2) If a portfolio plan is extended beyond its commission- 842
approved term by division (F) (1) of this section, the existing 843
plan's budget shall be increased for the extended term to 844
include an amount equal to the annual average of the approved 845
budget for all years of the portfolio plan in effect as of the 846
effective date of the amendments to this section by H.B. 6 of 847
the 133rd general assembly. 848

(3) All other terms and conditions of a portfolio plan 849
extended beyond its commission-approved term by division (F) (1) 850
of this section shall remain the same unless changes are 851
authorized by the commission upon the electric distribution 852
utility's request. 853

(G) All requirements imposed and all programs implemented 854
under this section shall terminate on December 31, 2020, 855
provided an electric distribution utility recovers in the 856
following year all remaining program costs incurred or to be 857
incurred, including costs incurred for contractual obligations 858
and any costs to discontinue the portfolio plan programs through 859
applicable tariff schedules or riders in effect on the effective 860
date of the amendments to this section by H.B. 6 of the 133rd 861
general assembly. 862

Sec. 4928.661. (A) Not earlier than January 1, 2020, an electric distribution utility may submit an application to the public utilities commission for approval of programs to encourage energy efficiency or peak demand reduction. The application may include descriptions of the proposed programs including all of the following:

(1) The size and scope of the programs;

(2) Applicability of the programs to specific customer classes;

(3) Recovery of costs and incentives;

(4) Any other information determined by the electric distribution utility to be appropriate for the commission's review.

(B) The commission shall issue an order approving or modifying and approving an application if it finds that the proposed programs will be cost-effective, in the public interest, and consistent with state policy as specified in section 4928.02 of the Revised Code.

(C) Applications submitted and approved under this section shall not take effect earlier than January 1, 2021.

Sec. 4928.6610. As used in sections 4928.6611 to ~~4928.6616~~ 4928.6615 of the Revised Code:

(A) "Customer" means ~~any~~ either of the following:

(1) Effective January 1, 2020, a mercantile customer as defined in section 4928.01 of the Revised Code;

(2) Any customer of an electric distribution utility to which either of the following applies:

~~(1)~~ (a) The customer receives service above the primary voltage level as determined by the utility's tariff classification. 890
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~~(2)~~ (b) The customer is a commercial or industrial customer to which both of the following apply: 893
894

~~(a)~~ (i) The customer receives electricity through a meter of an end user or through more than one meter at a single location in a quantity that exceeds forty-five million kilowatt hours of electricity for the preceding calendar year. 895
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~~(b)~~ (ii) The customer has made a written request for registration as a self-assessing purchaser pursuant to section 5727.81 of the Revised Code. 899
900
901

(B) "Energy intensity" means the amount of energy, from electricity, used or consumed per unit of production. 902
903

(C) "Portfolio plan" means either of the following: 904

(1) The comprehensive energy efficiency and peak-demand reduction program portfolio plan required under rules adopted by the public utilities commission and codified in Chapter 4901:1-39 of the Administrative Code or hereafter recodified or amended; 905
906
907
908
909

(2) A plan approved under section 4928.661 of the Revised Code or under rules adopted under that section. 910
911

Section 2. That existing sections 3706.02, 3706.03, 4928.644, 4928.66, and 4928.6610 of the Revised Code are hereby repealed. 912
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Section 3. That section 4928.6616 of the Revised Code is hereby repealed. 915
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Section 4. (A) Not earlier than two years after the 917
effective date of this section, the Director of Environmental 918
Protection may apply to the Administrator of the United States 919
Environmental Protection Agency for an exemption from the 920
requirement to implement the decentralized motor vehicle 921
inspection and maintenance program established under section 922
3704.14 of the Revised Code. In making the application and for 923
purposes of complying with the "Federal Clean Air Act," the 924
Director shall request the Administrator to authorize the 925
implementation of the Ohio Clean Air Program established by this 926
act as an alternative to the decentralized program in those 927
areas of the state where the program is currently operating. 928

(B) As used in this section, "Federal Clean Air Act" has 929
the same meaning as in section 3704.01 of the Revised Code. 930

Section 5. If any provisions of a section as amended or 931
enacted by this act, or the application thereof to any person or 932
circumstance is held invalid, the invalidity does not affect 933
other provisions or applications of the section or related 934
sections that can be given effect without the invalid provision 935
or application, and to this end the provisions are severable. 936